

## **Item SP05-10 Response Form**

**Title:**   **Arbitration: Ethics Standards for Neutral Arbitrators in Contractual Arbitration**  
(amend Cal. Rules of Court, appen., div. VI, std. 3 and request for comments on current ethics standards for neutral arbitrators in contractual arbitration)

**Position on proposed changes to Standard 3:**

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments on proposed changes to Standard 3 or on other aspects of current Ethics Standards for Neutral Arbitrators in Contractual Arbitration:

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ **Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664                      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, January 20, 2006
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council  
or the Rules and Projects Committee  
All comments will become part of the public record of the council's action.*

Title	<b>Arbitration: Ethics Standards for Neutral Arbitrators in Contractual Arbitration</b> (amend Cal. Rules of Court, appen., div. VI, std. 3 and request for comments on current ethics standards for neutral arbitrators in contractual arbitration)
Summary	This proposal would amend the application provision of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration to reflect recent court decisions. In addition, comments are invited on all of the ethics standards.
Source	Administrative Office of the Courts Staff
Staff	Heather Anderson, Senior Attorney, 415-865-7691, <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>  Alan Wiener, Attorney, 818-558-3051, <a href="mailto:alan.wiener@jud.ca.gov">alan.wiener@jud.ca.gov</a>
Discussion	<p>Code of Civil Procedure section 1281.85, which was enacted in September 2001, required the Judicial Council of California to adopt ethics standards for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. This section also established parameters for the scope and content of the ethics standards:</p> <p style="padding-left: 40px;">These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program<sup>1</sup> and may expand but may not limit the disclosure and disqualification requirements established by this chapter.<sup>2</sup> The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.</p>

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<sup>1</sup> The judicial arbitration program is governed by Code Civ. Proc., §§ 1141.10–1141.31, and by Cal. Rules of Court, rules 1600–1618. Arbitrators in the judicial arbitration program are also subject to the provisions of Cal. Code Jud. Ethics, canon 6D.

<sup>2</sup> That is, chapter 2, Enforcement of Arbitration Agreements, Code Civ. Proc., §§ 1281–1281.95. Disclosure and disqualification requirements in this chapter are set out in §§ 1281.9, 1281.91, and 1281.95.

In April 2002, the Judicial Council adopted the Ethics Standards for Neutral Arbitrators in Contractual Arbitration.<sup>3</sup> As provided in Code of Civil Procedure section 1281.85, all persons serving as neutral arbitrators pursuant to an arbitration agreement are required to comply with these ethics standards. The subjects addressed by the standards include: disclosure of interests, relationships, or affiliations that may constitute conflicts of interest; disqualification; acceptance of gifts; establishment of future professional relationships; conduct of the proceeding; ex parte communications; confidentiality; compensation; and marketing.

1. Amendment to Standard 3. Application and effective date

Since the Judicial Council adopted these ethics standards, there have been several cases involving their application to arbitrators serving in securities arbitrations for the National Association of Securities Dealers (NASD). Earlier this year, both the California Supreme Court in *Jevne v. Superior Court* ((2005) 35 Cal.4th 935) and the United States Court of Appeal for the Ninth Circuit in *Credit Suisse First Boston Corp. v. Grunwald* ((9th Cir. 2005) 400 F.3d 119) held that the federal Securities Exchange Act preempts application of the California ethics standards to NASD arbitrators. The courts concluded that NASD arbitrators are governed by arbitration rules that were approved by the United States Securities and Exchange Commission (SEC) under federal law and that the California standards relating to disqualification are in conflict with the SEC-approved rules.

To reflect these court decisions, staff is proposing that standard 3, which addresses the application of the standards, be amended to specifically exempt arbitrators serving in an arbitration proceeding governed by rules adopted by a securities self-regulatory organization and approved by the United States SEC under federal law. We solicit your comments on this proposed amendment.

2. Comments on all Ethics Standards for Neutral Arbitrators in Contractual Arbitration

In addition, we invite your comments on all of the ethics standards. In December 2002, following a public comment period, the Ethics Standards for Neutral Arbitrators in Contractual Arbitration were substantially revised. Many of those who commented on the standards at that time suggested that the Judicial Council establish a method for ensuring ongoing review and

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<sup>3</sup> These standards were adopted as division VI of the appendix to the California Rules of Court.

amendment of the standards. Those commentators noted that new issues were likely to arise as experience with the standards accumulated and as new statutes affecting arbitration were adopted. To address the commentators' concerns, the council directed staff to solicit comments on the standards again after January 1, 2004.

In fulfillment of the council's directive, staff is now seeking comments on all of the ethics standards. We particularly request suggestions for ways in which any of the standards can be improved. The text of the standards can be obtained from the California Courts Web site at [www.courtinfo.ca.gov/rules/appendix/appdiv6.pdf](http://www.courtinfo.ca.gov/rules/appendix/appdiv6.pdf). If you would like a hard copy of the standards, please request it from Romunda Price at [romunda.price@jud.ca.gov](mailto:romunda.price@jud.ca.gov).

All comments will be carefully reviewed and considered. If it is determined that additional amendments to the standards are necessary, recommendations for such amendments will be presented to the Judicial Council. The comments received through this process will then become part of the public record of the council's action.

While we welcome your comments on any aspect of the standards, it is important to note that the council's authority to modify certain provisions in the standards is limited. The standards must comply with statutory direction given to the council under section 1285.85, including the stricture that the standards may expand but not limit the disclosure and disqualification requirements established by statute. As noted in the comments to standards 7 and 10, which appear following the text of the standards in both the published volume of the rules of court and on the California Court website listed above, many of the specific disclosure and disqualification provisions in these standards simply embody statutory requirements.

This invitation to comment is being sent to the California Dispute Resolution Council; the Association for Conflict Resolution; the National Academy of Arbitrators; the College of Commercial Arbitrators; the Center for Public Resources; the American Arbitration Association, JAMS, and all other arbitration provider organizations of which we are aware. It also is being sent to the California Judges Association; Public Citizen; the Consumers Union; the Council of Better Business Bureaus; the California Chamber of Commerce; the American Corporate Counsel Association; the State Bar of California; local bar associations in California; the American Bar Association Section on Dispute Resolution; and all those who commented on the standards circulated for comment in January and May

2002.

We ask that you please send a copy of this invitation to any other person or entity that you think might be interested in these standards, or let us know if there are others to whom we should distribute this information. We want to make every effort to ensure that all interested persons and entities are made aware of this invitation to comment.

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Attachment

Standard 3 of division VI, Ethics Standards for Neutral Arbitrators in Contractual Arbitration, of the appendix to the California Rules of Court would be amended, effective July 1, 2006, to read:

**Standard 3. Application and effective date**

(a) Except as otherwise provided in this standard and standard 8, these standards apply to all persons who are appointed to serve as neutral arbitrators on or after July 1, 2002, in any arbitration under an arbitration agreement, if:

(1) The arbitration agreement is subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or

(2) The arbitration hearing is to be conducted in California.

(b) These standards do not apply to:

(1) Party arbitrators, as defined in these standards; or

(2) Any arbitrator serving in:

(A) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;

(B) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;

(C) An attorney-client fee arbitration proceeding subject to the provisions of article 13 of chapter 4 of division 3 of the Business and Professions Code;

(D) An automobile warranty dispute resolution process certified under California Code of Regulations title 16, division 33.1;

(E) An arbitration of a workers' compensation dispute under Labor Code sections 5270 through 5277;

(F) An arbitration conducted by the Workers' Compensation Appeals Board under Labor Code section 5308;

(G) An arbitration of a complaint filed against a contractor with the Contractors State License Board under Business and Professions Code sections 7085 through 7085.7; ~~or~~

1 (H) An arbitration conducted under or arising out of public or private  
2 sector labor-relations laws, regulations, charter provisions,  
3 ordinances, statutes, or agreements-; or  
4

5 (I) An arbitration proceeding governed by rules adopted by a  
6 securities self-regulatory organization and approved by the United  
7 States Securities and Exchange Commission under federal law.  
8

9 (c) Persons who are serving in arbitrations in which they were appointed to  
10 serve as arbitrators before July 1, 2002, are not subject to these  
11 standards in those arbitrations. Persons who are serving in arbitrations  
12 in which they were appointed to serve as arbitrators before January 1,  
13 2003, are not subject to standard 8 in those arbitrations.  
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15 **Comment to Standard 3**

16 With the exception of standard 8, these standards apply to all neutral arbitrators  
17 appointed on or after July 1, 2002, who meet the criteria of subdivision (a). Arbitration provider  
18 organizations, although not themselves subject to these standards, should be aware of them when  
19 performing administrative functions that involve arbitrators who are subject to these standards. A  
20 provider organization's policies and actions should facilitate, not impede, compliance with the  
21 standards by arbitrators who are affiliated with the provider organization.  
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23 Subdivision (b)(2)(I) is intended to implement the decisions of the California Supreme  
24 Court in *Jevne v. Superior Court* ((2005) 35 Cal.4th 935) and of the United States Court of  
25 Appeals for the Ninth Circuit in *Credit Suisse First Boston Corp. v. Grunwald* ((9th Cir. 2005)  
26 400 F.3d 1119).  
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